

1 V. Andre Sherman (Cal. State Bar No. 198684)

2 *asherman@girardikeese.com*

3 **GIRARDI | KEESE**

4 1126 Wilshire Boulevard

5 Los Angeles, California 90017

6 Telephone: (213) 977-0211

7 Facsimile: (213) 481-1554

8 *Attorneys for Plaintiff Daniel Silva*

9 [Additional Plaintiff's Counsel Listed on Following Page]

10 Michael S. Kun (State Bar No. 208684)

11 Kevin D. Sullivan (State Bar No. 270343)

12 **EPSTEIN BECKER & GREEN, P.C.**

13 1925 Century Park East, Suite 500

14 Los Angeles, California 90067-2506

15 Telephone: (310) 556-8861

16 Facsimile: (310) 553-2165

17 *mkun@ebglaw.com*

18 *ksullivan@ebglaw.com*

19 *Attorneys for Defendant AvalonBay Communities, Inc.*

20 **UNITED STATES DISTRICT COURT**

21 **CENTRAL DISTRICT OF CALIFORNIA**

22 DANIEL SILVA; individually, and on
23 behalf of other members of the general
24 public similarly situated,

25 Plaintiff,

26 vs.

27 AVALONBAY COMMUNITIES, INC.,
28 an unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 2:15-cv-04157-JAK-PLA

Honorable Paul L. Abrams

CLASS ACTION

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Complaint Filed: April 28, 2015

Jury Trial: None Set

1 Edwin Aiwarzian (Cal. State Bar No. 232943)

2 *edwin@lfjpc.com*

3 Arby Aiwarzian (Cal. State Bar No. 269827)

4 *arby@lfjpc.com*

5 Jill J. Parker (Cal. State Bar No. 274230)

6 *jill@lfjpc.com*

7 **LAWYERS for JUSTICE, PC**

8 410 West Arden Avenue, Suite 203

9 Glendale, California 91203

10 Telephone: (818) 265-1020

11 Facsimile: (818) 265-1021

12 *Attorneys for Plaintiff Daniel Silva*

1 **1. A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
12 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the court to file material under seal.

15 **B. GOOD CAUSE STATEMENT**

16 This action is likely to involve trade secrets, customer and pricing lists and
17 other valuable research, development, commercial, financial, technical and/or
18 proprietary information for which special protection from public disclosure and
19 from use for any purpose other than prosecution of this action is warranted. Such
20 confidential and proprietary materials and information consist of, among other
21 things, confidential business or financial information, information regarding
22 confidential business practices, or other confidential research, development, or
23 commercial information (including information implicating privacy rights of third
24 parties), information otherwise generally unavailable to the public, or which may
25 be privileged or otherwise protected from disclosure under state or federal statutes,
26 court rules, case decisions, or common law. Accordingly, to expedite the flow of
27 information, to facilitate the prompt resolution of disputes over confidentiality of
28 discovery materials, to adequately protect information the parties are entitled to

1 keep confidential, to ensure that the parties are permitted reasonable necessary uses
 2 of such material in preparation for and in the conduct of trial, to address their
 3 handling at the end of the litigation, and serve the ends of justice, a protective order
 4 for such information is justified in this matter. It is the intent of the parties that
 5 information will not be designated as confidential for tactical reasons and that
 6 nothing be so designated without a good faith belief that it has been maintained in
 7 a confidential, non-public manner, and there is good cause why it should not be
 8 part of the public record of this case.

9 **2. DEFINITIONS**

10 2.1 Action: Daniel Silva v. Avalonbay Communities, Inc., Case No. 2:15-
 11 cv-04157-JAK-PLA.

12 2.2 Challenging Party: a Party or Non-Party that challenges the designation
 13 of information or items under this Order.

14 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
 15 how it is generated, stored or maintained) or tangible things that qualify for
 16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
 17 the Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
 19 support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information or
 21 items that it produces in disclosures or in responses to discovery as
 22 "CONFIDENTIAL."

23 2.6 Disclosure or Discovery Material: all items or information, regardless of
 24 the medium or manner in which it is generated, stored, or maintained (including,
 25 among other things, testimony, transcripts, and tangible things), that are produced
 26 or generated in disclosures or responses to discovery in this matter.

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1 2.7 Expert: a person with specialized knowledge or experience in a matter
 2 pertinent to the litigation who has been retained by a Party or its counsel to serve
 3 as an expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
 5 House Counsel does not include Outside Counsel of Record or any other outside
 6 counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association, or
 8 other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a party
 10 to this Action but are retained to represent or advise a party to this Action and have
 11 appeared in this Action on behalf of that party or are affiliated with a law firm that
 12 has appeared on behalf of that party, including support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
 14 employees, consultants, retained experts, and Outside Counsel of Record (and their
 15 support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
 17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation support
 19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
 20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 21 and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
 23 designated as "CONFIDENTIAL."

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
 25 from a Producing Party.

26 **3. SCOPE**

27 The protections conferred by this Stipulation and Order cover not only
 28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 2 compilations of Protected Material; and (3) any testimony, conversations, or
 3 presentations by Parties or their Counsel that might reveal Protected Material.

4 Any use of Protected Material at trial shall be governed by the orders of the trial
 5 judge. This Order does not govern the use of Protected Material at trial.

6 **4. DURATION**

7 Once a case proceeds to trial, all of the information to be introduced that was
 8 previously designated as confidential or maintained pursuant to this protective
 9 order becomes public and will be presumptively available to all members of the
 10 public, including the press, unless compelling reasons supported by specific factual
 11 findings to proceed otherwise are made to the trial judge in advance of the trial.
 12 See Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir.
 13 2006) (distinguishing “good cause” showing for sealing documents produced in
 14 discovery from “compelling reasons” standard when merits-related documents are
 15 part of court record). Accordingly, the terms of this protective order do not extend
 16 beyond the commencement of the trial.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

19 Each Party or Non-Party that designates information or items for protection under
 20 this Order must take care to limit any such designation to specific material that
 21 qualifies under the appropriate standards. The Designating Party must designate for
 22 protection only those parts of material, documents, items, or oral or written
 23 communications that qualify so that other portions of the material, documents,
 24 items, or communications for which protection is not warranted are not swept
 25 unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations
 27 that are shown to be clearly unjustified or that have been made for an improper
 28 purpose (e.g., to unnecessarily encumber the case development process or to

1 impose unnecessary expenses and burdens on other parties) may expose the
2 Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it
4 designated for protection do not qualify for protection, that Designating Party must
5 promptly notify all other Parties that it is withdrawing the inapplicable designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix, at a minimum, the legend
15 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
16 contains protected material. If only a portion or portions of the material on a page
17 qualifies for protection, the Producing Party also must clearly identify the
18 protected portion(s) (e.g., by making appropriate markings in the margins).

19 A Party or Non-Party that makes original documents available for inspection
20 need not designate them for protection until after the inspecting Party has indicated
21 which documents it would like copied and produced. During the inspection and
22 before the designation, all of the material made available for inspection shall be
23 deemed "CONFIDENTIAL." After the inspecting Party has identified the
24 documents it wants copied and produced, the Producing Party must determine
25 which documents, or portions thereof, qualify for protection under this Order.
26 Then, before producing the specified documents, the Producing Party must affix
27 the "CONFIDENTIAL legend" to each page that contains Protected Material. If
28 only a portion or portions of the material on a page qualifies for protection, the

1 Producing Party also must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins).

3 (b) for testimony given in depositions that the Designating Party identify the
4 Disclosure or Discovery Material on the record, before the close of the deposition.

5 (c) for information produced in some form other than documentary and for
6 any other tangible items, that the Producing Party affix in a prominent place on the
7 exterior of the container or containers in which the information is stored the legend
8 "CONFIDENTIAL." If only a portion or portions of the information warrants
9 protection, the Producing Party, to the extent practicable, shall identify the
10 protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
12 failure to designate qualified information or items does not, standing alone, waive
13 the Designating Party's right to secure protection under this Order for such
14 material. Upon timely correction of a designation, the Receiving Party must make
15 reasonable efforts to assure that the material is treated in accordance with the
16 provisions of this Order.

17 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
19 designation of confidentiality at any time that is consistent with the Court's
20 Scheduling Order.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
22 resolution process under Local Rule 37.1, et seq. Any discovery motion must
23 strictly comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

24 6.3 Burden. The burden of persuasion in any such challenge proceeding shall
25 be on the Designating Party. Frivolous challenges, and those made for an improper
26 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
27 parties) may expose the Challenging Party to sanctions. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, all parties shall

1 continue to afford the material in question the level of protection to which it is
 2 entitled under the Producing Party's designation until the Court rules on the
 3 challenge.

4 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 6 disclosed or produced by another Party or by a Non-Party in connection with this
 7 Action only for prosecuting, defending, or attempting to settle this Action. Such
 8 Protected Material may be disclosed only to the categories of persons and under
 9 the conditions described in this Order. When the Action has been terminated, a
 10 Receiving Party must comply with the provisions of section 13 below (FINAL
 11 DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a
 13 location and in a secure manner that ensures that access is limited to the persons
 14 authorized under this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 16 otherwise ordered by the Court or permitted in writing by the Designating Party, a
 17 Receiving Party may disclose any information or item designated
 18 "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
 20 as employees of said Outside Counsel of Record to whom it is reasonably
 21 necessary to disclose the information for this Action;

22 (b) the officers, directors, and employees (including House Counsel) of the
 23 Receiving Party to whom disclosure is reasonably necessary for this Action;

24 (c) Experts (as defined in this Order) of the Receiving Party to whom
 25 disclosure is reasonably necessary for this Action and who have signed the
 26 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27 (d) the Court and its personnel;

28 (e) court reporters and their staff;

1 (f) professional jury or trial consultants, mock jurors, and Professional
 2 Vendors to whom disclosure is reasonably necessary for this Action and who have
 3 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

4 (g) the author or recipient of a document containing the information or a
 5 custodian or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses, in the
 7 Action to whom disclosure is reasonably necessary provided: (1) the deposing
 8 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
 9 they will not be permitted to keep any confidential information unless they sign the
 10 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
 11 agreed by the Designating Party or ordered by the Court. Pages of transcribed
 12 deposition testimony or exhibits to depositions that reveal Protected Material may
 13 be separately bound by the court reporter and may not be disclosed to anyone
 14 except as permitted under this Stipulated Protective Order; and

15 (i) any mediator or settlement officer, and their supporting personnel,
 16 mutually agreed upon by any of the parties engaged in settlement discussions.

17 7.3 Contact information and Employment Records of the Putative Class
 18 Shall Be Used in This Litigation Only and Are Prohibited from Disclosure
 19 Otherwise. Notwithstanding any other provisions herein, the parties recognize that
 20 the contact information and employment records for some putative class members
 21 may be produced at some point during the pendency of this litigation. None of the
 22 contact information or employment records of putative class members shall be
 23 used for any purpose outside of this litigation, and will not be disseminated to any
 24 third party under any circumstances, except where agreed to in writing by counsel
 25 for both parties – e.g., to a third party class action administrator for the
 26 dissemination of a privacy opt-out notice to putative class members pursuant to
 27 Belaire-West Landscape, Inc. v. Superior Court, 149 Cal.App.4th 554 (2007) – or
 28 in accordance with the procedures set forth in this Stipulated Protective Order for

1 the disclosure of documents and information designated as "CONFIDENTIAL" to
 2 authorized persons under section 7.2 "Under these circumstances, the potential
 3 privacy interests of putative class members are adequately balanced." Coleman v.
 4 Jenny Craig, Inc., 2013 U.S. Dist. LEXIS 82815, *33 (S.D. Cal. June 12, 2013)
 5 (quoting Artis v. Deere & Co., 276 F.R.D. 348, 353 (N.D. Cal. 2011)).

6 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
 7 **IN OTHER LITIGATION**

8 If a Party is served with a subpoena or a court order issued in other litigation
 9 that compels disclosure of any information or items designated in this Action as
 10 "CONFIDENTIAL," that Party must:

11 (a) promptly notify in writing the Designating Party. Such notification shall
 12 include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to
 14 issue in the other litigation that some or all of the material covered by the subpoena
 15 or order is subject to this Protective Order. Such notification shall include a copy
 16 of this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued
 18 by the Designating Party whose Protected Material may be affected. If the
 19 Designating Party timely seeks a protective order, the Party served with the
 20 subpoena or court order shall not produce any information designated in this action
 21 as "CONFIDENTIAL" before a determination by the court from which the
 22 subpoena or order issued, unless the Party has obtained the Designating Party's
 23 permission. The Designating Party shall bear the burden and expense of seeking
 24 protection in that court of its confidential material and nothing in these provisions
 25 should be construed as authorizing or encouraging a Receiving Party in this Action
 26 to disobey a lawful directive from another court.

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**9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its Protected Material.

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1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has
 3 disclosed Protected Material to any person or in any circumstance not authorized
 4 under this Stipulated Protective Order, the Receiving Party must immediately (a)
 5 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
 6 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
 7 the person or persons to whom unauthorized disclosures were made of all the terms
 8 of this Order, and (d) request such person or persons to execute the
 9 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
 10 A.

11 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
 12 **PROTECTED MATERIAL**

13 When a Producing Party gives notice to Receiving Parties that certain
 14 inadvertently produced material is subject to a claim of privilege or other
 15 protection, the obligations of the Receiving Parties are those set forth in Federal
 16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 17 whatever procedure may be established in an e-discovery order that provides for
 18 production without prior privilege review. Pursuant to Federal Rule of Evidence
 19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
 20 of a communication or information covered by the attorney-client privilege or
 21 work product protection, the parties may incorporate their agreement in the
 22 stipulated protective order submitted to the Court.

23 **12. MISCELLANEOUS**

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 25 person to seek its modification by the Court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 27 Protective Order, no Party waives any right it otherwise would have to object to
 28 disclosing or producing any information or item on any ground not addressed in

1 this Stipulated Protective Order. Similarly, no Party waives any right to object on
2 any ground to use in evidence of any of the material covered by this Protective
3 Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material
6 may only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue; good cause must be shown in the request to
8 file under seal. If a Party's request to file Protected Material under seal is denied
9 by the Court, then the Receiving Party may file the information in the public record
10 unless otherwise instructed by the Court.

11 If Protected Material is included in any papers to be filed in Court, such
12 filing shall comply with the procedures set forth in this Court's Standing Order Re
13 Under Seal Pilot Program, Dkt. No. 6, Ex. F at Page ID Nos. 135–140.

14 **13. FINAL DISPOSITION**

15 After the final disposition of this Action, within 60 days of a written request
16 by the Designating Party, each Receiving Party must return all Protected Material
17 to the Producing Party or destroy such material. As used in this subdivision, "all
18 Protected Material" includes all copies, abstracts, compilations, summaries, and
19 any other format reproducing or capturing any of the Protected Material. Whether
20 the Protected Material is returned or destroyed, the Receiving Party must submit a
21 written certification to the Producing Party (and, if not the same person or entity, to
22 the Designating Party) by the 60 day deadline that (1) identifies (by category,
23 where appropriate) all the Protected Material that was returned or destroyed and
24 (2) affirms that the Receiving Party has not retained any copies, abstracts,
25 compilations, summaries or any other format reproducing or capturing any of the
26 Protected Material. Notwithstanding this provision, counsel are entitled to retain an
27 archival copy of all pleadings, motion papers, trial, deposition, and hearing
28 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert

1 reports, attorney work product, and consultant and expert work product, even if
2 such materials contain Protected Material. Any such archival copies that contain or
3 constitute Protected Material remain subject to this Protective Order as set forth in
4 Section 4 (DURATION).

5 14. Any violation of this Order may be punished by any and all appropriate
6 measures including, without limitation, contempt proceedings and/or monetary
7 sanctions.

8 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

9
10 Dated: August 18, 2015

LAWYERS for JUSTICE, PC

11
12 By: /s/ Jill J. Parker

Jill J. Parker

Attorneys for Plaintiff

13
14 Dated: August 18, 2015

EPSTEIN BECKER & GREEN, P.C.

15
16 By: /s/ Michael S. Kun


Michael S. Kun

Attorneys for Defendant

17
18 *Pursuant to Local Rule 5-4.3.4(a)(2), the filer attests that all other
19 signatories listed, and on whose behalf the filing is submitted, concur in the
20 filing's content and have authorized the filing.

21
22 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

23 Dated: AUG. 19, 2015



Hon. Paul L. Abrams

United States Magistrate Judge

reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: August 18, 2015

LAWYERS *for* JUSTICE, PC

By: /s/ Jill J. Parker

Jill J. Parker

Attorneys for Plaintiff

Dated: August 18, 2015

EPSTEIN BECKER & GREEN, P.C.

By: /s/ Michael S. Kun

Michael S. Kun

Attorneys for Defendant

*Pursuant to Local Rule 5-4.3.4(a)(2), the filer attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: _____

Hon. Paul L. Abrams

United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare
 under penalty of perjury that I have read in its entirety and understand the
 Stipulated Protective Order that was issued by the United States District Court for
 the Central District of California on [date] in the case of Daniel Silva v.
Avalonbay Communities, Inc., Case No. 2:15-cv-04157-JAK-PLA. I agree to
 comply with and to be bound by all the terms of this Stipulated Protective Order
 and I understand and acknowledge that failure to so comply could expose me to
 sanctions and punishment in the nature of contempt. I solemnly promise that I will
 not disclose in any manner any information or item that is subject to this Stipulated
 Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Central District of California for the purpose of enforcing the terms
 of this Stipulated Protective Order, even if such enforcement proceedings occur
 after termination of this action. I hereby appoint _____ [print or
 type full name] of _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____